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United States
Circuit Court of Appeals
For the Ninth Circuit.

CITIZENS NATIONAL TRUST & SAVINGS
BANK OF LOS ANGELES,

Appellant,

vs.

UNITED STATES OF AMERICA, B. Y. TAFT
and B. Y. TAFT and ARTHUR T. EARL, as
Executors of the Estate of Mary Eleanor Taft,
Deceased,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

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PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF
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For Appellees B. Y. Taft et al:

CARLETON W. HOLBROOK

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Los Angeles, Calif. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States in and
for the Southern District of California, Central
Division.

No. 1666 BH

UNITED STATES OF AMERICA,

Plaintiff,

v.

B. Y. TAFT, CITIZENS NATIONAL TRUST
AND SAVINGS BANK OF LOS ANGELES,
and B. Y. TAFT and ARTHUR T. EARL, as
Executors of the Estate of Mary Eleanor Taft,
deceased,

Defendants.

COMPLAINT

Now Comes the United States of America, by
Wm. Fleet Palmer, United States Attorney in and
for the Southern District of California, E. H.
Mitchell, Assistant United States Attorney for said
District, and Eugene Harpole, Special Attorney for
the Bureau of Internal Revenue, and for a cause
of action against the above-named defendants al-
leges that—

I.

At all times hereinafter mentioned the plaintiff
has been, and now, is, a corporation sovereign and
body politic.

II.

That action arises under Sections 210 and 211 of
the Revenue Act of 1926, c. 27, 44 Stat. 9; Sec-

tions 11 and 12 of the Revenue Act of 1928, c. 852, 45 Stat. 791; Section 3186 of the Revised Statutes; and Section 3207 of the Revised Statutes, as amended by Section 802 of the Revenue Act of 1936, c. 690, 49 Stat. 1648, as [2] hereinafter more fully appears; and the same is commenced by the direction of the Attorney General of the United States at the request of the Commissioner of Internal Revenue.

III.

Defendant B. Y. Taft resides at 6315 Yucca Street, in the City of Hollywood and State of California.

IV.

Defendant Citizens National Trust and Savings Bank of Los Angeles is a banking corporation organized under the laws of the United States, with its place of business and office located in the City of Los Angeles, in the State of California.

V.

The said B. Y. Taft and defendant Arthur T. Earl are the executors of the estate of Mary Eleanor Taft now pending in probate in the Superior Court of California, in and for the County of Los Angeles.

VI.

On November 29, 1930, the Commissioner of Internal Revenue assessed a tax upon the income of defendant B. Y. Taft for the calendar year 1926, of \$864.78, and interest of \$192.24, a total assess-

ment of \$1,057.02. On that day said B. Y. Taft paid thereon the amount of \$11.52. No part of the balance of said assessment of \$1,045.50 has been paid.

VII.

On said November 29, 1930, said Commissioner assessed a tax upon the income of defendant B. Y. Taft for the calendar year 1927, [3] of \$4,175.68, and interest of \$677.72, a total assessment of \$4,853.40. No part of said amount has been paid.

VIII.

On August 25, 1931, said Commissioner assessed a tax upon the income of defendant B. Y. Taft for the calendar year 1928, of \$609.08, and interest of \$57.86, a total assessment of \$666.94. A credit of \$94.77 was allowed thereon as of the date of October 15, 1930. No part of the balance of \$572.17 has been paid.

IX.

On November 7, 1932, defendant B. Y. Taft and the plaintiff entered into an agreement in writing, which was on said day signed by said B. Y. Taft and said Commissioner, whereby it was agreed that the amounts of \$1,057.02, \$4,853.40 and \$572.17, representing said assessments of income taxes for the years 1926, 1927 and 1928, may be collected from said B. Y. Taft by distraint or by a proceeding in court begun at any time.

X.

On or before December 5, 1930, and subsequent

thereto, one Galen H. Welch was the appointed, qualified, and acting Collector of Internal Revenue in and for the United States Sixth Internal Revenue District of California.

XI.

On December 5, 1930, said Galen H. Welch, as said Collector, received the assessment lists of the assessments alleged in paragraphs VI and VII, and on August 21, 1931, he received the assessment list of the assessment alleged in paragraph VIII of this Complaint. [4]

XII.

On or about December 6, 1930, January 31, 1931, August 22, 1931, and October 9, 1931, the plaintiff gave notice to and demanded payment from said B. Y. Taft of said assessed taxes and interest alleged in paragraphs VI, VII, and VIII of this Complaint. Warrants for Dstraint were issued on February 14, 1931, and December 1, 1931.

XIII.

On February 13, 1931, said Galen H. Welch, as said Collector, filed with the Clerk of the District Court of the United States for the Southern District of California a written notice of lien, wherein it was set forth that the assessment of taxes and interest on account of the income of said B. Y. Taft for the year 1926 was made in the amount of \$1,057.02, which, after demand for payment, remained unpaid, and that, by virtue of the statutes in such case made and provided, the amount of

such taxes, together with penalties, interest, and costs that may accrue in addition thereto, was a lien in favor of the United States upon all property and rights to property belonging to said B. Y. Taft.

XIV.

On February 18, 1931, a written notice of lien of like tenor and effect as that described in paragraph XIII of this Complaint was filed by said Collector in the office of the County Recorder of Los Angeles County, California.

XV.

On February 13, 1931, said Galen H. Welch, as said Collector, filed with the Clerk of the District Court of the United States for the Southern District of California a written notice of lien wherein it was set forth that the assessment of taxes and interest [5] on account of the income of said B. Y. Taft for the year 1927 was made in the amount of \$4,853.40, which, after demand for payment, remained totally unpaid, and that, by virtue of the statutes in such case made and provided, the amount of such taxes, together with penalties, interest, and costs that may accrue in addition thereto, was a lien in favor of the United States upon all the property and rights to property belonging to said B. Y. Taft.

XVI.

On February 18, 1931, a written notice of lien of like tenor and effect as that described in para-

graph XV of this Complaint was filed by said Collector in the office of the County Recorder of Los Angeles County, California.

XVII.

On December 7, 1931, said Galen H. Welch, as said Collector, filed with the Clerk of the District Court of the United States for the Southern District of California and with the County Recorder of Los Angeles County, California, a written notice of lien wherein it was set forth that the assessment of taxes and interest on account of the income of said B. Y. Taft for the year 1928 was made in the amount of \$572.17, which, after demand for payment, remained totally unpaid, and that, by virtue of the statutes in such case made and provided, the amount of such taxes, together with penalties, interest, and costs that may accrue in addition thereto, was a lien in favor of the United States upon all the property and rights to property belonging to B. Y. Taft.

XVIII.

Defendant B. Y. Taft is one of the devisees and legatees, under the will, of said estate of Mary Eleanor Taft, and is entitled to succeed to the estate of said decedent upon the closing thereof in the proportion of an undivided one-fourteenth part thereof. [6]

XIX.

The plaintiff alleges upon information and belief that defendant Citizens National Trust and Savings Bank of Los Angeles has, or claims to have,

some right, lien, title or interest in the property and things of value mentioned in paragraph XVIII of this Complaint, or in the property and things of value belonging to defendant B. Y. Taft; but the plaintiff further alleges that any such right, lien, title or interest of said Citizens National Trust and Savings Bank is junior and inferior to the lien and rights of the United States for said taxes.

Wherefore, the plaintiff prays:

1. That it do have and recover judgment against defendant B. Y. Taft for the full amount of \$6,-471.07, together with interest thereon as allowed by law.

2. That the Court, at the next term after the defendants herein have been notified of this proceeding, unless otherwise ordered by the Court, adjudicate the rights of the parties herein and finally determine the merits of all claims to, and liens upon, the property and the rights to the property and things of value of defendant B. Y. Taft, and especially the property and things of value described in paragraph XVIII of this Complaint

3. That the Court order, adjudge, and decree that the plaintiff have a first and superior lien upon the property and things of value of said B. Y. Taft, and especially the property and things of value described in paragraph XVIII of this Complaint.

4. That the amount of all property, credits, rights to, or interest in, property belonging to defendant B. Y. Taft, and determined [7] by the Court to be subject to the lien of the United States, be enforced; that the Court order a sale of such

property as the Court may determine belonging to defendant B. Y. Taft and subject to the lien of the United States; and that the proceeds of any such sale be applied to the payment of the Judgment herein prayed for; or if such property has been reduced to cash or by the nature thereof requires no sale, the Court order that same, or so much thereof as may be necessary, be applied upon the satisfaction of said Judgment.

5. That defendants B. Y. Taft and Arthur T. Earl, as executors of the estate of Mary Eleanor Taft, deceased, be required to account to this Court for all property, rights to property, credits, money and things of value in their possession or under their control, belonging to or to which the said B. Y. Taft has in any manner an interest therein.

6. That the plaintiff do have such other and further relief as to the Court may seem meet and proper in the premises.

WM. FLEET PALMER,
E.H.

United States Attorney.

E. H. MITCHELL,
E. H.

Asst. U. S. Attorney.

EUGENE HARPOLE,
Special Attorney, Bureau of
Internal Revenue.
Attorneys for Plaintiff.

[Title of District Court and Cause.]

SEPARATE ANSWER OF B. Y. TAFT

Comes Now B. Y. Taft, for himself alone, and for the separate answer to Complaint of plaintiff, filed herein, states:

I.

Admits all the allegations contained in said Complaint.

Wherefore, this defendant prays that the Court adjudicate all the rights of the parties herein, and particularly of this defendant, in and to the property referred to in said Complaint; and for all proper relief.

CARLETON W. HOLBROOK,
Attorney for Defendant, B. Y.
Taft. [12]

(Duly Verified.)

[Endorsed]: Filed Aug. 16, 1941. [13]

[Title of District Court and Cause.]

SEPARATE ANSWER OF B. Y. TAFT AND
ARTHUR T. EARL, AS EXECUTORS OF
THE ESTATE OF MARY ELEANOR TAFT,
DECEASED.

Come now B. Y. Taft and Arthur T. Earl, as Executors of the Estate of Mary Eleanor Taft, deceased, and for themselves alone, and for separate

answers to the complaint of plaintiff, filed herein, state:

I.

They admit all the allegations contained in said complaint.

II.

Further answering, said executors state:

That the property and assets of the estate of Mary Eleanor Taft, deceased, which are in the possession or under the control of said executors, consist of the following:

(1) Lot 5, Block 30 of Electric Railway Homestead [14] Association, as per map recorded in Book 14, pages 27 to 28 of Miscellaneous records of Los Angeles County, California.

(2) Lot 78 of Tract 6600 as per map recorded in Book 93, pages 30 and 31 of Maps records of Los Angeles County, California.

(3) Lot One (1) of H. F. Spencer's Subdivision of the North Half ($N\frac{1}{2}$) of Block Fifty-seven (57) of Ord's Survey, in the City of Los Angeles, County of Los Angeles, State of California, except that portion taken to widen Eighth Street, as per map recorded in Book 5, page 35 of Miscellaneous Record of Los Angeles County, California. Same is subject to a lease bearing date the 4th day of November, 1912 in which Mary E. Taft, the decedent is the Lessor, for the term of fifty (50) years, beginning December 1st, 1912 and ending the 30th day of November, 1962; there remained of said

lease at the time of her death which was the 13th day of March, 1938, a period from said date down to and including November 30, 1962. Of this remaining period the lease drawn rents monthly at the rate of \$500.00 a month for the last fifteen (15) years and for the 9 years 8 months and 17 days of said lease prior to the last 15 years the monthly rental value is \$450.00 a month.

Upon said property there is a Class A. Building with five stories and a basement. By the terms of said lease during the life time of the decedent and by the provisions of the lease, upon the termination of the said lease, the building and other improvements thereupon pass to the owner of the title to the property.

(4) The sum of approximately \$6,290.30 in cash, which will be available for distribution under the orders of the Superior Court of the State of California in and for the County of Los Angeles.

Wherefore, these defendants pray that the Court [15] adjudicate all the rights of the parties herein in and to the property referred to herein, and for all proper relief.

CARLETON W. HOLBROOK,

Attorney for the Defendants.

(Duly Verified.)

[Endorsed]: Filed Aug. 16, 1941. [16]

[Title of District Court and Cause.]

ANSWER OF CITIZENS NATIONAL TRUST
& SAVINGS BANK OF LOS ANGELES,
DEFENDANT.

Comes now the Citizens National Trust & Savings Bank of Los Angeles, a National Banking Association, and appearing for itself alone, and answering the complaint on file herein, admits, denies, and alleges as follows:

I.

This defendant admits all of the allegations of Paragraphs I, II, III, IV, and V of said complaint.

II.

This defendant has not sufficient information or belief to enable it to answer and basing its denial upon that ground denies generally and specifically each and all of the allegations of Paragraph VI of said complaint, and of Paragraphs VII, VIII, and IX of said complaint. [17]

III.

This defendant admits the allegations contained in Paragraph X of said complaint.

IV.

This defendant has not sufficient information or belief to enable it to answer and basing its denial upon that ground denies generally and specifically

each and all of the allegations of Paragraphs XI, XII, and XIII of said complaint.

V.

Answering Paragraph XIV this defendant admits that notice of lien was filed by the Collector in the office of the County Recorder of Los Angeles County, California, but this defendant has not sufficient information or belief to enable it to answer whether the notice of lien was of like tenor as that described in Paragraph XIII of said complaint and basing its denial upon that ground denies that said lien was of like tenor and effect as that described in said Paragraph XIII of said complaint.

VI.

This defendant has not sufficient information or belief to enable it to answer and basing its denial upon that ground denies generally and specifically each and all of the allegations of Paragraphs XV and XVI of said complaint except that said defendant admits that on February 18, 1931, a written notice of lien was filed by said Collector in the office of the County Recorder of Los Angeles County, California.

VII.

This defendant has not sufficient information or belief to enable it to answer and basing its denial upon that ground denies generally and specifically each and all of the allegations of Paragraph XVII except this answering defendant admits that a writ-

ten notice of lien was filed with the County Recorder of Los Angeles County, California, on or about December 7, 1931. [18]

VIII.

This defendant admits the allegations of Paragraph XVIII of said complaint save and except this defendant alleges that said interest of 'B. Y. Taft is subject to an execution lien levied by this answering defendant upon the said interest of said B. Y. Taft in said estate.

IX.

Answering Paragraph XIX of said complaint, this defendant admits that it claims to have some right, lien, title, and interest in the property and things of value mentioned in Paragraph XVIII of said complaint and in the property and things of value belonging to B. Y. Taft; but denies that such right, lien, title, or interest of this defendant is junior and inferior to the lien and rights of the United States for said taxes or otherwise, and alleges the fact to be that said claim and lien of this defendant is paramount to any claim, lien, right, or title of said plaintiff.

As a Further, Separate, and Second Defense to Said Complaint, This Defendant Alleges:

I.

This answering defendant alleges that the claims of the United States of America, plaintiff, for in-

come tax as set forth and alleged in its complaint on file herein, are barred by the provisions of the Internal Revenue Code, U.S.C.A., Title 26, Section 275 (a) and Section 276 (c).

As a Further, Separate, and Third Defense to Said Complaint, This Defendant Alleges:

I.

That the claims of the plaintiff as set forth in its complaint on file herein are subject and subordinate to the claim of this answering defendant by virtue of a levy of execution against all of the interest of B. Y. Taft in and to the Estate of Mary Eleanor Taft, deceased, arising out of an action on file in the Superior Court [19] of the State of California, in and for the County of Los Angeles, No. 423931, entitled "Citizens National Trust & Savings Bank of Los Angeles, a National Banking Association, Plaintiff, vs., David E. Fulwider, R. Clifford Gordon, W. W. Stamm, and B. Y. Taft, Defendants," said levy of execution on the part of this defendant having been made prior to the distraint proceedings instituted by the plaintiff herein, the United States of America.

Wherefore this defendant prays that the plaintiff take nothing by this complaint and that it be determined by the Court that the rights of this defendant are paramount and superior to the rights of the plaintiff herein, and for such other and fur-

ther relief as the Court may deem just and equitable.

PAUL J. OTTO,

Attorney for Defendant, Citizens National Trust & Savings Bank of Los Angeles.

[20]

(Duly Verified.)

[Endorsed]: Filed Oct. 24, 1941. [21]

[Title of District Court and Cause.]

STIPULATION OF FACTS

It Is Hereby Stipulated and Agreed by and between the plaintiff herein and the defendant Citizens National Trust & Savings Bank of Los Angeles, through their respective counsel, that in so far as the controversy existing between said parties in the above entitled proceeding is concerned the following facts are true:

I.

That all of the allegations of fact contained in Paragraphs I. to XVIII. inclusive of the complaint on file herein shall be deemed true and correct.

II.

That Mary Eleanor Taft died on or about March 13, 1938, a resident of the County of Los Angeles, State of California, and that at the time of her

death she left an estate now being probated in [22] the Superior Court of the State of California, in and for the County of Los Angeles, and that by her Will said Mary Eleanor Taft left B. Y. Taft an undivided one-fourteenth ($1/14$) interest in her said estate.

III.

That on or about the 9th day of March, 1938, the defendant Citizens National Trust & Savings Bank of Los Angeles, in an action filed in the Superior Court of the State of California, in and for the County of Los Angeles, obtained a judgment against B. Y. Taft in the amount of \$17,829 plus interest as provided by law, and that thereafter and on or about the 9th day of April, 1938, said Citizens National Trust & Savings Bank of Los Angeles levied a writ of execution on all of the right, title, and interest of the said B. Y. Taft in and to the Estate of Mary Eleanor Taft, deceased, a notice of levy and copy of execution being filed with the Clerk in said probate proceedings on April 9, 1938.

IV.

That thereafter and on or about the 20th day of September, 1940, the United States Collector of Internal Revenue for the Sixth Collection District of California levied a warrant of distraint upon said property and rights to property of said B. Y. Taft in the possession of the Executors of the Estate of Mary Eleanor Taft, deceased, by making

demand upon said Executors for the immediate surrender of such property, rights to property, money, or credits as were determined by the Court to be properly distributable to said B. Y. Taft; that said notice and demand served upon the Executors as aforesaid was the only notice and demand of the plaintiff herein to the right, title, and interest of said B. Y. Taft in and to the estate of said Mary Eleanor Taft, deceased, other than the said liens recorded as alleged in plaintiff's complaint.

Dated this 5th day of December, 1941. [23]

WM. FLEET PALMER,
United States Attorney,

E. H. MITCHELL,
Asst. U. S. Attorney, &

EUGENE HARPOLE,
Special Attorney, Bureau of
Internal Revenue

SAMUEL TAYLOR
Special Attorney, Bureau of
Internal Revenue

By EUGENE HARPOLE
Attorneys for Plaintiff

PAUL J. OTTO
Attorney for Defendant Citi-
zens National Trust & Sav-
ings Bank of Los Angeles.

It Is Further Stipulated that the Citizens National Trust & Savings had no actual knowledge or

notice of the liens and claims of the plaintiff, other than the notice arising from recordations of the tax liens referred to in plaintiff's complaint.

E. H. by S. T.

PAUL J. OTTO

By H. ELLIOT POWNALL, Jr.

[Endorsed]: Filed Dec. 10, 1941. [24]

[Title of District Court and Cause.]

OPINION

Appearances:

William Fleet Palmer

United States Attorney

E. H. Mitchell

Assistant United States Attorney

Eugene Harpole

Special Attorney, Bureau of Internal Revenue
Attorneys for the Plaintiff,

Carleton W. Holbrook,

Attorney for Defendant B. Y. Taft and
Arthur T. Earl as Executors of the Es-
tate of Mary Eleanor Taft, Deceased,

Paul J. Otto and

H. Elliott Pownall,

Attorneys for Defendant, Citizens Na-
tional Trust & Savings Bank of Los An-
geles.

This action involves the determination of the priority between a tax lien created under the provisions of Sections 3670 and 3671 of the Revenue Code, and a lien created by the levy of an execution by the Citizens National Trust & Savings Bank of Los Angeles. The sole question involved is whether or not the lien created by said sections attaches to after-acquired property. The case was submitted on a written stipulation [27] of facts.

The facts, in so far as they are pertinent to this case, disclose that during the year 1931, the Government perfected its lien in the sum of \$6,471.07, and interest upon all property and rights to property belonging to the defendant B. Y. Taft.

Paragraph IX of the complaint alleges that:

“On November 7, 1932, defendant B. Y. Taft and the plaintiff entered into an agreement in writing, which was on said day signed by B. Y. Taft and said Commissioner, whereby it was agreed that the amounts of \$1,057.02, \$4,853.40 and \$572.17, representing said assessments of income taxes for the years 1926, 1927 and 1928, may be collected from said B. Y. Taft by distraint or by a proceeding in court begun at any time.”

The stipulation of facts admits this allegation. The court raised the question relative to the sufficiency of this allegation as a sufficient pleading alleging the waiver of the statute of limitations. The defendant, Citizens National Trust & Savings Bank of Los Angeles, in its supplemental brief stated:

“Further, the defendant bank is not raising any question as to the effect of the waiver executed by the defendant B. Y. Taft, it being conceded that a waiver was signed by said Taft on November 7, 1932. The particular point upon which defendant bank relies in the instant action is that the lien of the Government did not attach to the property of the judgment debtor, which is here in controversy, and that the only basis upon which the Government is entitled to claim is upon the basis of the distraint proceedings, which it is stipulated were not run until September, 1940, approximately two years subsequent to the date [28] on which the claim of the defendant bank attaches to the property.”

The court has accepted statement of counsel and the issue of the statute of limitations is thereby waived as an issue in this case.

On March 13, 1938, Mary Eleanor Taft died and under the terms of her last will and testament, the defendant B. Y. Taft, was bequeathed an undivided 1/14th interest therein. The said estate is being probated in the County of Los Angeles and the estate is located in said County.

On April 9, 1938, the Citizens National Trust & Savings Bank of Los Angeles, levied a writ of execution on all the right, title and interest of said B. Y. Taft in the estate of said deceased on a judgment procured on March 9, 1938, for the sum of \$17,829.00 and interest. Thereafter, on September 20, 1940, the Collector levied a warrant of distraint upon said property.

Said Sections 3670 and 3671 read as follows:

“Section 3670. Property Subject to Lien

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. 53 Stat. 448.”

“Section 3671. Period of Lien

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or become unenforceable by reason of lapse of time. 53 Stat. 449.” [29]

Since the original adoption of Section 3186 Revised Statutes of the United States, only two reported court cases are found attempting to pass upon the question herein involved.

The first case is *United States v. Pacific Railroad et al*, reported in 1 Fed. 97. The court in this case was considering the point as to whether or not the lien attached to property which had been conveyed to innocent purchasers prior to any demand and was not considering after-acquired property. The court therein stated:

“* * * Let us examine the phraseology: ‘If any person, * * * liable to pay a tax, shall

neglect or refuse to pay the same after demand, the amount shall be a lien in favor of the United States from the time it was due until paid, * * * upon all property, etc., belonging* to such person,' etc. The statute doe not say 'upon all property which may have belonged to such person when the tax accrued.'

This or similar language would, I think, have been employed if Congress had intended to give the statute this effect. It must be conceded that the words 'all property * * * belonging to such person' must be construed as referring to some time to be ascertained by the context; and it may also be conceded that we might, without doing violence to the language of the law, refer them to the time when the tax became due, and make the clause read 'all property, etc., belonging to such person, etc., at the time the tax became due.' This, however, does violence to the spirit of the act for reasons already stated. Another reading is authorized by the language, and is in harmony with the spirit, and that is the one I have adopted, namely, that the words in question refer [30] to the time when the demand is made, and may be phrased thus: 'All property, etc., belonging to such person at the time such

*Emphasis by the court.

demand is made.' By this construction the lien, when it once attaches, relates back to the time when the tax was due, but it does not attach to the property transferred to innocent purchasers prior to demand. This view also harmonizes with the general policy of the law relating to land titles, which is to protect the citizen against loss from secret liens, not disclosed by any public record nor ascertainable by due diligence. Nor is it unjust toward the government, for it is fair to presume that the government, armed as it is with so many agencies and appliances for ascertaining what taxes are due and unpaid, and from whom, and all-powerful as it is to enforce its rights, will, within reasonable time, make demand, or take some steps in the direction of making collections, in all cases where there is delinquency. The government may protect itself by diligence if the view I take of the statute shall prevail; but, if the opposite view is sustained, the citizen who purchases real estate is absolutely without protection against possible liens for taxes of this character."

It will be noted that the court there was construing the lien statute as originally enacted and before any amendment thereto had been made. I am of the opinion that this decision is not entitled to great weight for the reason that in so far as the same applies to after-acquired property, it is mere dictum and for the further reason that the statute

under consideration has been amended in a material respect.

The law as originally enacted provided "the amount shall be a lien in favor of the United States from the time it was due until paid" [31] while under the present state of the law, it is specifically provided that the lien "shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time".

After the lapse of sixty years, in the case of *United States v. Long Island Drug Co., Inc., et al.*, 115 F. (2d) 983 (2d Cir.) involving the question of whether the drug company had in its possession any personal property belonging to the debtor taxpayer, the court stated:

"* * * Rights which do not exist at the time of the demand upon the taxpayer are not subjected to any lien. *United States v. Pacific R. R., C. C. Mo.*, 1 Fed. 97. Here there was no showing that the taxpayer had any claim against the Drug Company when the demand upon him for payment was made."

And the court further stated:

"In the absence of a statute to the contrary, it is the usual rule that a garnishment does not affect future earnings or salary. *Savings Bank of Danbury v. Loewe*, 242 U. S. 357, 37 S. Ct. 172, 61 L. Ed. 360. Moreover, there would seem to be no justice in depriving the garnishee of its right to set off which, so far as the record shows was acquired for a valuable consideration before the demand was made on the Drug

Company by the Collector. Both on April 15, 1936, when payment was first demanded of the Drug Company, and on March 7, 1939, when the last demand was made, the latter owed no debt to Steinberg upon which distraint could be made. We find nothing in Section 3690 or Section 3710 which varies the general rule that a garnishee process is not to be extended to future earnings, but will only reach an indebtedness which has accrued. [32]

It appears from the foregoing that there was no lien upon any earnings of Steinberg on April 15, 1936, or accruing thereafter, and that he had no accrued earnings upon the dates upon which a levy was attempted. Accordingly the Long Island Drug Company, Inc., had no property which it could be required to surrender by reason of the provision of 26 USCA Internal Revenue Code, §3710."

From the foregoing it will be observed that the real issue before the court did not involve after-acquired property. The court having determined the drug company had no property in its possession at the time of the levy, naturally, the Government's case fell. This case must be considered as an approval of the case of *United States v. Pacific R. R.*, *supra*, but the opinion discloses that the court failed to consider that the reason on which this decision is predicated ceased to exist when Section 3186 of the Rev. Stat. was amended so as to require the recording of notice to render the lien valid as against innocent purchasers.

To the contrary, the Board of Tax Appeals in the case of *A. H. Graves et al v. Commissioner*, 12 B.T.A. 124, in discussing Section 3186 of the Revised Statutes in part said:

“We do not consider it necessary unduly to enlarge this opinion by an extended consideration of questions relative to the time the lien arises; the time it attaches; or to what property it attaches, except to state that the lien arises only if here has been an assessment plus notice and demand. It relates back from the time of notice and demand to the time when the assessment list was received by the collector, and it attaches upon such property as the taxpayer has at the time the lien arises, that is, at the time of notice and demand, *United [33] States v. Pacific R. R.*, 1 F. 97, and, of course, to all the property that the tax debtor subsequently acquires.” (Underscoring supplied)

It will be noted from the above quotation that the case of *United States v. Pacific R. R.*, *supra*, is approved in so far as it held that the lien attaches to the property of the taxpayer held at the time the lien arises but specifically repudiates by way of dictum said decision, in so far as it applies to after-acquired property.

One published General Counsel Memorandum is found in C. B. VII-2, page 94, involving the interpretation of Section 613(c) of the Revenue Act of 1928. In this memorandum the following language is used:

“Assuming the fact of the foreclosed prior

mortgage and all other facts to be as stated, it is the opinion of this office that the above-quoted section of the law does not mean that the Government's lien against *th* property of a taxpayer should be released before the six-year period governing collection has expired, for the reason that it is altogether probable that a delinquent taxpayer may at any time prior to the expiration of the statutory period of limitation become possessed of property against which the lien may attach, thus making the tax liability enforceable through the lien. * * *” (Underscoring supplied)

It will thus be seen that the Board of Tax Appeals and the Departmental interpretation are in conflict with the two cases above cited.

In the case of *Minnesota Mutual Life Insurance Co. et al. v. United States*, 47 F. (2d) 942 (N. D. Texas), I find the following language used:

“The decree will not extinguish the lien against anything else that the debtor may acquire, nor does it extinguish the debt. It merely removes the cloud from [34] the particular real estate described in this suit because the value thereof is very much less than the prior lien owned by the plaintiffs, and there is and would be no equity for the junior lienholder, to wit, the United States.” (Underscoring supplied)

It has been held that the Federal Tax lien has the effect of a judgment (*Bull v. U. S.* 295 U. S. 247) and it would appear that a federal tax lien is somewhat analogous to a judgment lien, and it might not be going too far astray to examine some

of the authorities that deal with this subject, in so far as the same applies to after-acquired property. It is true that most of the states specifically provide by statute that the judgment lien shall apply to after-acquired property, consequently, only cases that construe statutes that do not specifically so provide should be considered.

Generally speaking, a majority of the courts hold that a judgment is a lien on after acquired property (15 R. C. L. 802), but a contrary rule has been adopted in some jurisdictions (34 C. J. p. 590).

Pennsylvania appears to be the first state to hold that a judgment does not affect after acquired property (*Colhoun v. Snider*, 6 Binn. 135). In a later decision in *Water's Appeal*, 35 Penn. St. 523, 78 Am. Dec. 354, the court stated:

“Notwithstanding the dissatisfaction that has been expressed with the doctrine of *Colhoun v. Snider*, supra, by several judges, it has been followed in a multitude of cases, and it is too firmly rooted in our law to be shaken at this day.”

It will thus be noted that the Pennsylvania courts clung to their former holdings under the rule of *stare decisis*.

The Ohio courts followed the Pennsylvania holdings (*Roads v. Symmes*, 1 Ohio 281; 13 Am. Dec. 621). But the courts of Ohio were not any too happy in this holding as reflected in *Stiles, ex. Dem. Miller & McDonald v. Murphy*, 4 Ohio, p. 92. The court stated at page 98: [35]

“* * * When a rule of construction has been adopted, upon which titles to real estate depend, it would lead to great inconvenience, if not injustice, to alter it. That decision may have been an innovation upon established principles of law—it may have been a departure from true policy, under the circumstances in which we are placed—but it would be a more dangerous innovation, and a wider departure from true policy now to disturb it. 2 Cran. 22; 1 Ohio, 1.”

But a majority of the state courts have refused to follow the rule as reflected by the decisions in Pennsylvania and Ohio. (See *Steele v. Taylor*, 1 Minn. 210-215; *Elisha S. Babock v. John Jones*, 15 Kans. 229; *Lewis Ralston etc. v. John D. Field*, 32 Ga. 453; *Bank v. Watson & Hubbard*, 13 Ark., 74-85; *Atlas Portland Cement Co., et al. v. Fox*, 265 Fed. 444-446; *Freeman on Judgments*, 5th Ed. §955, page 2007.

Coad v. Cowhick et al., 63 Pac. 584, is an exceptionally well reasoned case wherein the court said:

“At common law, except for debts due the king, the lands of the debtor were not liable to the satisfaction of a judgment against him, and consequently no lien thereon was acquired by a judgment. But by St. Westm. II (13 Edw. I), c. 18, the judgment creditor was given his election to sue out a writ of *fi. fa.* against the goods and chattels of the defendant, or else a writ commanding the sheriff to deliver to him all the chattels of the defendant, except oxen

and beasts of the plow, and a moiety of his lands, until the debt should be levied by a reasonable price and extent. When the creditor chose the latter alternative, his election was entered on the roll, and hence the writ was denominated an "elegit". *Hutcheson v. Grubbs*, 80 Va. 254. While this statute did not in direct terms create the lien, courts so [36] construed it as to infer a lien from the power to take the lands in execution. *Scriba v. Deane*, 1 Brock, 170 Fed. Cas. No. 12,559. And this lien has been held by the English courts and by the almost unanimous opinion of the courts of this country to extend to the after-acquired lands of the debtor. Most of the states have enacted statutes declaring the lien, and, almost without exception, and without regard to whether such statute in terms extended the lien to after-acquired lands, they have held that such lands were bound by the judgment from the time of their acquisition by the debtor. *Freeman on Judgments* 367. So far as I can find, the only two exceptions are Pennsylvania and Ohio. There was also a similar holding in Iowa. *Harrington v. Sharp*, 1. G. Greene, 131. But the rule laid down in that case was subsequently changed by an amendment to the statute expressly providing that judgments should be a lien upon after-acquired lands, thus bringing it into line with the mass of opinion in this country. *Ware v. Delahaye*, 95 Iowa, 682, 64 N. W. 640. The Mississippi court is also cited as adopting the same construction. But an ex-

amination of the cases shows that that court simply rejected the contention that lands subsequently acquired were bound from the date of the judgment, and held that 'the lien attached on after-acquired property from the time it was acquired by the debtor.' *Moody v. Harper* 25 Miss. 492; *Cayce v. Stovall*, 50 Miss. 402."

Nebraska courts in *Filley & Hopkins v. Duncan*, 1 Neb. 134, first followed the Pennsylvania rule but later in *Colt v. DuBois*, 7 Neb. 391, [37] the court at page 396 stated:

"It is undoubtedly true, that where a rule of construction, upon which titles to real estate depend, has been adopted, it may lead to great inconveniences, if not injustice, to change it. But as the question presented by this case has never before been submitted to this court, we deem it best to disregard the dictum in the case of *Filley v. Duncan*, and lay down what we deem to be the correct rule, subjecting land acquired subsequently to the rendition of a judgment to its payment. The judgment of the district court is affirmed."

From the foregoing it must be conceded that the great weight of authority is in favor of the view, that judgments, are liens upon after-acquired property, notwithstanding the statutes do not specifically so provide. Many of the statutes considered in such cases are less specific than Sections 3670 and 3671 of the Revenue Code.

I am of the opinion that the majority rule should be applied in construing said Section 3670 and so applying it, I have concluded that the lien so created applies to after-acquired property.

I am of the further opinion that said Sections 3670 and 3671 create a lien on after-acquired property for the following additional reasons:

1. The departmental interpretation of these sections is entitled to great weight and should not be disregarded without the most cogent and persuasive reasons. (*Baltzell v. Mitchell*, 3 Fed. (2d) 428 and cases therein cited; *Maryland Casualty Co. v. U. S.*, 251 U. S. 342.)

2. Section 3670 subjects "all property and rights to property" to the lien. Section 3671 provides when the lien arises and "shall continue until the liability for such an amount is satisfied or becomes unenforceable by reason of lapse of time". Under the reasoning of defendant Citizens National Trust & Savings Bank of Los Angeles, if the [38] debtor taxpayer owned no property at the time of the creation of the lien, it would cease to exist and said section 3671 would be meaningless and the provision for the continuance of the lien would be surplusage. To so hold would in effect nullify said section 3671, and violate well recognized rules on statutory construction. (*Armstrong Co. v. Nu-Enamel Corp.*, 305 U. S. 315.)

I therefore hold that such a tax lien does not depend upon the existence of property belonging to the judgment debtor for its sustenance and continued life. The lien created by said section 3670

continues as provided in section 3671 and attaches to after-acquired property.

I find added support to my conclusions in the construction of section 3679 of the Revenue Code which provides for a means of clearing title to realty affected by liens created under said section 3670. In *Oden v. United States*, 33 Fed. (2d) 553; *U. S. v. Snyder*, 149 U. S. 210; *Minnesota Mutual Life Insurance Co. et al. v. United States*, 47 F. (2d) 942, and *Sherwood v. United States*, 5 Fed. (2d) 991, it has been held that a decree freeing certain property from the lien does not extinguish the lien. If such is true, what is the purpose of the continuance of the lien unless it is continued in existence for the purpose of affixing itself to after-acquired property.

The lien herein involved stands of record and in no manner whatsoever affects the rights of innocent third parties. It is inconceivable that Congress in any manner, under said sections 3670 and 3671, intended to weaken the Government by staying the hand of the Collector so that he could not reach after-acquired property.

Judgment for plaintiff. Counsel for plaintiff is directed to submit expeditiously proposed findings and decree in accordance with this opinion.

Dated: Los Angeles, California, April 4th, 1942.

BEN HARRISON

Judge

[Endorsed]: Filed Apr. 4, 1942. [39]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled case was submitted to the Court upon a written Stipulation of Facts on December 9, 1941. The submission was subsequently vacated and the matter thereafter resubmitted to the Court on Briefs. The Court, after considering the evidence, makes the following Findings of Fact:

I.

That all of the allegations of fact contained in Paragraphs I to XVIII, inclusive, of the Complaint on file herein are true and correct. [40]

II.

That Mary Eleanor Taft died on or about March 13, 1938, a resident of the County of Los Angeles, State of California, and that at the time of her death she left an estate now being probated in the Superior Court of the State of California, in and for the County of Los Angeles, and that by her Will said Mary Eleanor Taft left B. Y. Taft an undivided one-fourteenth interest in her said estate.

III.

That on or about the 9th day of March, 1938, the defendant, Citizens National Trust & Savings Bank of Los Angeles, in an action filed in the Superior Court of the State of California, in and

for the County of Los Angeles, obtained a judgment against B. Y. Taft in the amount of \$17,829.00 plus interest as provided by law, and that thereafter and on or about the 9th day of April, 1938, said Citizens National Trust & Savings Bank of Los Angeles levied a writ of execution on all of the right, title and interest of the said B. Y. Taft in and to the Estate of Mary Eleanor Taft, deceased, a notice of levy and copy of execution being filed with the Clerk in said probate proceedings on April 9, 1938.

IV.

That thereafter and on or about the 20th day of September, 1940, the United States Collector of Internal Revenue for the Sixth Collection District of California levied a warrant of distraint upon said property and rights to property of said B. Y. Taft in the possession of the Executors of the Estate of Mary Eleanor Taft, deceased, by making demand upon said Executors for the immediate surrender of such property, rights to property, money, or credits as were determined by the Court to be properly distributable to said B. Y. Taft; that said notice and demand served upon the Executors as aforesaid was the only notice and demand of the plaintiff herein to the right, title and interest of said B. Y. Taft in and to the [41] Estate of said Mary Eleanor Taft, deceased, other than the said liens recorded as alleged in plaintiff's Complaint.

V.

That the defendant, Citizens National Trust & Savings Bank of Los Angeles, had no actual knowledge or notice of the liens and claims of the plaintiff other than the notice arising from recordation of the tax liens referred to in plaintiff's Complaint.

VI.

That the defendant, Citizens National Trust & Savings Bank of Los Angeles, raises no question as to the effect of the waiver of the statute of limitations, which it is acknowledged the defendant, B. Y. Taft, signed on November 7, 1932.

From the foregoing Findings of Fact the Court makes the following Conclusions of Law:

I.

That by virtue of the provisions of Section 3186(a) of the Revised Statutes of the United States (Section 3670 of the Internal Revenue Code) the United States acquired a lien upon all property and rights to property belonging to the defendant, B. Y. Taft, as of the dates the Collector of Internal Revenue at Los Angeles, California, received the assessment lists covering the Federal income taxes of said B. Y. Taft for the years 1926, 1927 and 1928; to-wit, on December 5, 1930 with respect to the taxes for 1926 and 1927 and on August 21, 1931, with respect to the taxes for 1928.

II.

That under the provisions of Section 3186(a)

of the Revised Statutes of the United States (Section 3671 of the Internal Revenue Code) said tax liens have continued from the 5th day of December, 1930, and the 21st day of August, 1931, respectively, to the present [42] time, and are still in force, by reason of the taxpayer said B. Y. Taft having waived all statutes of limitation which might have applied to the collection of said 1926, 1927 and 1928 income taxes.

III.

That said tax liens attach to all property and rights to property acquired by the taxpayer, B. Y. Taft, including an undivided one-fourteenth interest given him by will in the estate of Mary Eleanor Taft, deceased, subsequent to December 5, 1930, and August 21, 1931, the dates upon which said tax liens arose.

IV.

That notices of said tax liens were recorded in the manner provided by Section 3186(b) of the Revised Statutes of the United States, now Section 3672 of the Internal Revenue Code, on the 13th and 18th days of February, 1931, with respect to the income taxes assessed against the defendant, B. Y. Taft, for the years 1926 and 1927 and on December 7, 1931, with respect to the taxes for 1928 and said liens have been at all times since, and now are, good, valid and effective as against all persons.

V.

That the defendant, Citizens National Trust & Savings Bank of Los Angeles, acquired a lien upon B. Y. Taft's said one-fourteenth interest in the estate of Mary Eleanor Taft, deceased, on the 9th day of April, 1938, by virtue of the levy of a writ of execution on the said interest of B. Y. Taft in the estate of Mary Eleanor Taft, deceased, but that said lien of the Citizens National Trust & Savings Bank of Los Angeles is junior, subordinate and inferior to the liens of the United States for the 1926, 1927 and 1928 income taxes of said B. Y. Taft.

VI.

That the liens of the United States for the 1926, 1927 and 1928 income taxes of said B. Y. Taft are superior and paramount to the [43] rights of any and all of the defendants herein in or to the one-fourteenth interest of said B. Y. Taft in the estate of Mary Eleanor Taft, deceased.

VII.

That the defendant, B. Y. Taft, is indebted to the plaintiff, United States of America, in the sum of \$6,471.07, together with interest thereon as allowed by law, on account of income taxes assessed against him for the years 1926, 1927 and 1928.

VIII.

That the plaintiff, United States of America, is entitled to an Order for the sale of said B. Y.

Taft's undivided one-fourteenth interest in and to the estate of Mary Eleanor Taft, deceased, under the said liens of the United States, and that the proceeds of said sale be applied upon said taxes; or that if said one-fourteenth interest has been reduced to cash, same be surrendered by the defendant, B. Y. Taft and Arthur T. Earl, as executors of the estate of Mary Eleanor Taft, to the United States of America or its Collector of Internal Revenue to be applied toward the satisfaction of said income taxes.

Dated: This 20 day of April, 1942.

BEN HARRISON

United States District Judge.

Approved As To Form:

PAUL J. OTTO and

H. ELLIOTT POWNALL

By

Attorneys for Defendant, Citizens National Trust & Savings Bank of Los Angeles.

CARLETON W. HOLBROOK

Attorney for Defendant, B. Y. Taft and Arthur T. Earl as Executors of the Estate of Mary Eleanor Taft, Deceased.

[Endorsed]: Filed Apr. 20, 1942. [44]

In the District Court of the United States in and for the Southern District of California, Central Division.

No. 1666-BH Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

B. Y. TAFT, CITIZENS NATIONAL TRUST
AND SAVINGS BANK OF LOS ANGELES,
and B. Y. TAFT and ARTHUR T. EARL, as
Executors of the Estate of MARY ELEANOR
TAFT, Deceased,

Defendants.

DECREE

The above entitled case was submitted to the Court upon a written Stipulation of Facts on December 9, 1941. The plaintiff, United States of America, appeared by its attorneys, William Fleet Palmer, United States Attorney for the Southern District of California, E. H. Mitchell, Asst. United States Attorney for said District, and Eugene Harpole and Samuel Taylor, Special Attorneys for the Bureau of Internal Revenue; Defendants, B. Y. Taft and Arthur T. Earl, as Executors of the Estate of Mary Eleanor Taft, Deceased, and B. Y. Taft, by their attorney, Carleton W. Holbrook, and Defendant, Citizens National Trust and Savings Bank of Los Angeles, by its at- [45] torneys, Paul J. Otto and H. Elliott Pownall; the Court

having made its Findings of Fact and entered its Conclusions of Law, herein decrees as follows:

I.

That the defendant, B. Y. Taft, is indebted to the plaintiff, United States of America, on account of 1926, 1927 and 1928 income taxes, in the sum of \$6,471.07, together with interest thereon as allowed by law.

II.

That the United States of America possesses a lien upon all property and rights to property of B. Y. Taft, including his undivided one-fourteenth interest in the estate of Mary Eleanor Taft, Deceased, on account of 1926, 1927 and 1928 income taxes, which lien is paramount and superior to the liens, claims and rights of all or any of the parties defendant.

III.

That the said undivided one-fourteenth interest of the defendant, B. Y. Taft, in the estate of Mary Eleanor Taft, Deceased, be sold by the United States Marshal and that the proceeds of such sale be applied, (1) toward the cost of sale and the balance remaining applied to the satisfaction of said income taxes; or that if such property has been reduced to cash, then the defendants, B. Y. Taft and Arthur T. Earl, as Executors of the

Estate of Mary Eleanor Taft, Deceased, account for and pay into this Court all of said cash, to be applied, (1) to the cost of this action and (2) toward the satisfaction of said income tax liability of B. Y. Taft for the years 1926, 1927 and 1928.

IV.

That the surplus, if any, remaining after the satisfaction of said taxes be paid to the defendant, Citizens National Trust and [46] Savings Bank of Los Angeles, to apply toward the satisfaction of its judgment.

V.

The remainder, if any, to be paid to the defendant, B. Y. Taft.

VI.

That the plaintiff, United States of America, do have and recover from the defendants herein its costs, to be taxed by the Clerk of this Court.

Dated: This 20 day of April, 1942.

BEN HARRISON

United States District Judge.

Approved As To Form:

PAUL J. OTTO and

H. ELLIOTT POWNALL

By

Attorneys for Defendant, Cit-
izens National Trust and
Savings Bank of Los An-
geles.

CARLETON W. HOLBROOK

Attorney for Defendant, B.
Y. Taft and Arthur T. Earl
as Executors of the Estate
of Mary Eleanor Taft, De-
ceased, and B. Y. Taft.

[Endorsed]: Filed and entered Apr. 20, 1942.

[47]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT
OF APPEALS UNDER RULE 73 (b)

Notice Is Hereby Given that the Citizens Na-
tional Trust & Savings Bank of Los Angeles, one
of the defendants in the above entitled action,
hereby appeals to the Circuit Court of Appeals

for the Ninth Circuit from the Judgment entered in this action on the 20th day of April, 1942.

Dated this 13th day of July, 1942.

PAUL J. OTTO

H. ELLIOT POWNALL, JR.

Attorneys for Appellant, Citizens National Trust & Savings Bank of Los Angeles.
453 S. Spring St., Room
1042, Los Angeles, California. TUCKER 3694.

[Endorsed]: Filed and Mld. Copies to Attys for Appellees Jul 16, 1942. [49]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 56, inclusive, contain full, true and correct copies of Complaint; Summons and Return of Marshal thereon; Separate Answer of B. Y. Taft; Separate Answer of B. Y. Tart and Arthur T. Earl as Executors of the Estate of Mary Eleanor Taft, deceased; Answer of Citizens National Trust & Savings Bank of Los Angeles, Defendant; Stipulation of Facts; Minute

Order of December 10, 1941; Minute Order of April 4, 1942; Opinion; Findings of Fact and Conclusions of Law; Decree; Notice by Clerk of Entry of Judgment; Notice of Appeal; Cost Bond on Appeal; and Stipulation Designating the Record, Proceedings and Evidence to be included in Record on Appeal which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the fees of the clerk for comparing, correcting and certifying the foregoing record amount to \$9.80 which amount has been paid to me by Appellant.

Witness my hand and the seal of the said District Court this 25 day of August, 1942.

[Seal]

EDMUND L. SMITH,
Clerk

By THEODORE HOCKE
Deputy Clerk

[Endorsed]: No. 10232. United States Circuit Court of Appeals for the Ninth Circuit. Citizens National Trust & Savings Bank of Los Angeles, Appellant, vs. United States of America, B. Y. Taft and B. Y. Taft and Arthur T. Earl, as Executors of the Estate of Mary Eleanor Taft, Deceased, Appellees. Transcript of Record. Upon Appeal from

the District Court of the United States for the Southern District of California, Central Division.

Filed August 26, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,
Plaintiff and Respondent,

vs.

B. Y. TAFT, and B. Y. TAFT and ARTHUR T.
EARL, as Executors of the Estate of Mary
Eleanor Taft, deceased,

Defendants,

and

CITIZENS NATIONAL TRUST & SAVINGS
BANK OF LOS ANGELES,

Defendant and Appellant.

STATEMENT OF POINTS AND DESIGNA-
TION OF PRINTED RECORD

(Subdivision 6 of Rule 19, C.C.A. 9)

STATEMENT OF POINTS

Under the provisions of the statutes of the United States creating a lien in favor of the government

for taxes and providing for the enforcement of a tax claim by distraint proceedings, the lien created under the provisions of Section 3186(a) of the Revised Statutes of the United States (Section 3670 of U.S.C.A., Title 26), does not attach to after acquired property of a tax debtor and the right of the government in and to after acquired property of a tax debtor does not arise until such property has been distrained upon by the government. It was therefore error for the District Court to hold and decree in the instant case that the United States had a lien for income taxes superior to, and was entitled to payment from after acquired assets of the tax debtor prior to, the lien of and the payment of the claim of appellant bank, where appellant bank had secured an attachment lien on said after acquired property more than a year prior to the government's asserting a claim by distraint proceedings on said property.

DESIGNATION OF PRINTED RECORD

The portions of the original certified record which appellant believes to be necessary for the consideration of the foregoing point and therefore designates as the part to be included in the printed record, are as follows:

1. The complaint as set forth commencing on page 2 of the original certified record.
2. Answer of Citizens National Trust & Savings Bank of Los Angeles, set forth commencing on page 17 of the original certified record.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF ADDITIONAL PARTS
OF RECORD FOR PRINTING

The Appellee believes the following portions of the certified record to be necessary for consideration of the points upon which appellant relies:

1. Opinion of the District Court, commencing on page 27 of the certified record.

WM. FLEET PALMER,
United States Attorney

E. H. MITCHELL,
Asst. U. S. Attorney,

EUGENE HARPOLE,
Special Attorney, Bureau of
Internal Revenue.

By EUGENE HARPOLE,
Attorneys for United States of
America.

[Endorsed]: Filed Aug. 28, 1942.